

INITIATION OF LEGISLATION

Initiation of legislation amending the Deferred Presentment Service Transaction Act, 2005 PA 244, MCL 487.2121, 487.2122, 487.2152, 487.2153, and 487.2160, and adding MCL 487.2160a to: rename the law the "Limit Interest Rates and Fees on Payday Loans Act"; describe deferred presentment service transactions as "payday loans" and licensees as "payday lenders"; prohibit service fees on these loans that are above an annual percentage rate of 36 percent, which lowers the maximum allowable rate, and require a consumer warning of the maximum rate; deem transactions that exceed this rate void and unenforceable; and provide powers to the Attorney General to enforce and penalize attempts to evade the Act's requirements.

Full text of the proposal (language that would be added shown in capital letters, deleted language struck out with a line):

An initiation of legislation to amend 2005 PA 244 entitled "AN ACT to regulate the business of providing deferred presentment service transactions; to require the licensing of providers of deferred presentment service transactions; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies" by amending sections 1, 2, 32, 33, and 40 (MCL 487.2121, 487.2122, 487.2152, 487.2153, and 487.2160) and adding a new section 40a (MCL 487.2160a).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1.

This act shall be known and may be cited as the ~~"deferred presentment service transactions act~~ LIMIT INTEREST RATES AND FEES ON PAYDAY LOANS ACT".

Sec. 2.

(1) As used in this act:

(a) "Applicant" means a person that is seeking a license to engage in the business of providing deferred presentment service transactions under this act.

(b) "Check" means a draft that is payable on demand and drawn on a bank, savings bank, savings and loan association, or credit union. Check includes any negotiable instrument that represents evidence of an obligation to pay even if it is described on its face by another term.

(c) "Closed" in connection with a deferred presentment service transaction means that 1 of the following has occurred concerning each of the customer's checks that is the basis of the deferred presentment service transaction:

(i) The check is redeemed by the customer by payment to the licensee of the face amount of the check in cash or payment from a debit card that meets the requirements of section 35(11).

(ii) The check is exchanged by the licensee for a cashier's check or cash from the customer's financial institution.

(iii) The check is deposited by the licensee and the licensee has evidence that the person has satisfied the obligation.

(iv) The check is collected by the licensee or its agent through any civil remedy available under the laws of this state.

(v) The check is collected by means of a repayment plan agreed on by the customer and the licensee or as the result of credit counseling where the licensee is paid the amount agreed upon by the licensee under that plan.

(vi) The check is collected by the licensee under section 35(9) and the licensee has evidence that the person has satisfied the obligation.

(d) "Commissioner" means the director or his or her authorized representative.

(e) "Customer" means an individual who inquires into the availability of or applies for a deferred presentment service transaction or a drawer who enters into a deferred presentment service transaction.

(f) "Database provider" means 1 of the following:

(i) A third party provider selected by the director under section 22 to operate the statewide database described in that section.

(ii) If the director has not selected a third party provider under section 22, the director.

(g) Subject to subsection (2), "deferred presentment service transaction" means a transaction, ALSO KNOWN AS A "PAYDAY LOAN," between a licensee and a customer under which the licensee agrees to do all of the following:

(i) Pay to the customer an agreed-upon amount in exchange for a fee.

(ii) Hold a customer's check for a period of time before negotiation, redemption, or presentment of the checks.

(h) "Department" means the department of insurance and financial services.

(i) "Director" means the director of the department or his or her authorized representative.

(j) "Drawee" means a bank, savings bank, savings and loan association, credit union, or other person on which a check is drawn.

(k) "Drawer" means a customer who enters into a deferred presentment service transaction with a licensee.

(l) "Executive officer" means an officer or director of a licensee or any other individual who has the authority to participate in the direction, directly or indirectly, through 1 or more persons, or the management or policies of a licensee.

(m) "Financial licensing act" means this act or any of the financial licensing acts as defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(n) "Licensee" means a person that is licensed to engage in the business of providing deferred presentment service transactions under this act, ALSO KNOWN AS A "PAYDAY LENDER."

(o) "Maturity date" means the date on which a drawer's check is to be redeemed, presented for payment, or entered into the check-clearing process in a deferred presentment service transaction.

(p) "Office" or "office of financial and insurance services" means the department.

(q) "Person" means an individual, partnership, association, corporation, limited liability company, or other legal entity except a governmental entity.

(r) "Redeem" means that the customer pays to the licensee an amount equal to the face amount of a check included in a deferred presentment service transaction, on or before the maturity date or after the check is deposited and returned unpaid by the drawee, and the licensee returns the check to the customer.

(S) "PAYDAY LENDER CONSUMER WARNING" MEANS THE FOLLOWING STATEMENT: "WARNING: PAYDAY LENDERS MAY NOT CHARGE INTEREST OR FEES ON A PAYDAY LOAN THAT EXCEEDS 36 PERCENT ANNUALLY, AND ANY VIOLATION OF THIS RULE RENDERS THE PAYDAY LOAN VOID AND UNENFORCEABLE."

(2) Deferred presentment service transaction does not include a delay in presentment of a loan repayment check, at the request of the borrower, by a person that is licensed or registered under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to 493.114, the money transmission services act, 2006 PA 250, MCL 487.1001 to 487.1047, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

Sec. 32.

(1) A licensee shall document a deferred presentment service transaction by entering into a written deferred presentment service agreement signed by both the customer and the licensee.

(2) A licensee shall include all of the following in the written deferred presentment service agreement:

(a) The name of the customer.

(b) The name, street address, facsimile number, and telephone number of the licensee.

- (c) The signature and printed or typed name of the individual who enters into the deferred presentment service agreement on behalf of the licensee.
- (d) The date of the transaction.
- (e) The transaction number assigned by the database provider, if any.
- (f) The amount of the check presented to the licensee by the customer.
- (g) An itemization of the fees to be paid by the customer.
- (h) A calculation of the cost of the fees and charges to the customer, expressed as a percentage rate per year.
- (i) A clear description of the customer's payment obligation under the agreement.
- (j) A schedule of all fees associated with the deferred presentment service transaction and an example of the amounts the customer would pay based on the amount of the deferred presentment service transaction.
- (k) The maturity date.
- (l) A provision that the licensee will defer presentment, defer negotiation, and defer entering a check into the check-clearing process until the maturity date.
- (m) A description of the process a drawer may use to file a complaint against the licensee.
- (n) The following notice in at least 12-point type:

"1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.

2. You should use this service only to meet short-term cash needs.

3. State law prohibits us from entering into this transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.

4. We must immediately give you a copy of your signed agreement.

5. We will pay the proceeds of this transaction to you by check, by money order, or in cash, as you request.

6. State law entitles you to the right to cancel this agreement and receive a refund of the fee. To do this, you must notify us and return the money you receive today by the time this office closes tomorrow or on our next business day if we are not open tomorrow.

7. State law prohibits us from renewing this agreement for a fee. You have to pay an agreement in full before obtaining additional money from us.

8. State law prohibits us from using any criminal process to collect on this agreement.

9. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442.

10. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442."

(O) THE PAYDAY LENDER CONSUMER WARNING IN AT LEAST 12-POINT BOLDFACED TYPE, IN ALL CAPITAL LETTERS.

- (3) A licensee may include an arbitration provision in a deferred presentment service transaction agreement if the arbitration provision meets all of the following:
 - (a) Provides that the licensee agrees to pay any costs of the arbitration.
 - (b) Provides that an arbitration proceeding shall be held within 10 miles of the drawer's address contained in the deferred presentment service transaction agreement unless the drawer consents to another location after an arbitrable dispute occurs.
 - (c) Provides that an arbitration proceeding shall be conducted by a neutral arbitrator who was not and is not currently being paid by the licensee and who has no financial interest in a party to the arbitration.
 - (d) Requires that the arbitrator shall provide the drawer with all the substantive rights that the drawer would have if the drawer's claim were asserted in a court proceeding and shall not limit any other claim or defense the drawer has concerning the claim.

Sec. 33.

(1) A licensee may enter into 1 deferred presentment service transaction with a customer for any amount up to \$600.00. A licensee may charge the customer a service fee for each deferred presentment service transaction. ~~A service fee is earned by the licensee on the date of the transaction and is not interest.~~ A licensee may charge both of the following as part of the service fee, as applicable:

- (a) An amount that does not exceed the aggregate of the following, as applicable:
 - ~~(i) Fifteen percent of the first \$100.00 of the deferred presentment service transaction;~~
 - ~~(ii) Fourteen percent of the second \$100.00 of the deferred presentment service transaction;~~
 - ~~(iii) Thirteen percent of the third \$100.00 of the deferred presentment service transaction;~~
 - ~~(iv) Twelve percent of the fourth \$100.00 of the deferred presentment service transaction;~~
 - ~~(v) Eleven percent of the fifth \$100.00 of the deferred presentment service transaction;~~
 - ~~(vi) Eleven percent of the sixth \$100.00 of the deferred presentment service transaction;~~

AN ANNUAL PERCENTAGE RATE OF 36%, INCLUSIVE OF ALL CHARGES FOR ANY ANCILLARY PRODUCT OR SERVICE AND ANY OTHER CHARGE, INTEREST, OR FEE INCIDENT TO THE EXTENSION OF CREDIT, AND INCLUSIVE OF ANY DATABASE VERIFICATION FEE UNDER SECTION 33(1)(B).

- (b) The amount of any database verification fee allowed under section 34(5).
- (2) A licensee shall not enter into a deferred presentment service transaction with a customer if the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee, and shall verify whether the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee by complying with section 34.
- (3) At the time of entering into a deferred presentment service transaction, a licensee shall do all of the following:
 - (a) Before the drawer signs the agreement, provide the following notice to the drawer, in a document separate from the agreement and in at least 12-point type:

"1. After signing this agreement, if you believe that we have violated the law, you may do 1 of the following:

 - a. Before the close of business on the day you sign the agreement, notify us in person of the violation. You must provide supporting documents or other evidence of the violation.
 - b. At any time before signing a new deferred presentment service agreement with us, notify us in writing of the violation. Your written notice must state the violation and provide supporting documents or other evidence of the violation.

2. We have 3 business days to determine if we agree that we have violated the law and let you know of that determination.

3. If we agree that we have violated the law, we must return your check and you must return the cash received under the agreement. Additionally, for each violation, we must pay you restitution equal to 5 times the amount of the fee we charged you under the agreement but not less than \$15.00 or more than the face amount of your check. You may also pursue an action for your actual damages against us.

4. If we do not agree that we have violated the law, we may present your check for payment or enter your check into the check-clearing process on or after the maturity date. If your check is returned to us unpaid, we may take other legal steps to collect our money.

5. If you still believe we violated the law, you may file a written complaint including supporting documents or other evidence with the ~~Office of Financial and Insurance Services~~ DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES. The ~~Office~~ DEPARTMENT is required to investigate your complaint and has the authority to order us to pay you restitution if they agree that we violated the law. In addition, the ~~Office~~ DEPARTMENT can order us to pay civil fines or take away our right to do business. To do so, contact the ~~Office of Financial and Insurance Services~~ DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES toll-free at 1-877-999-6442."
 - (b) Provide a copy of the signed agreement to the drawer.

- (c) Pay the proceeds under the agreement to the drawer by delivering a business check of the licensee, a money order, or cash, as requested by the drawer.
- (4) At the time of entering into a deferred presentment service transaction, a licensee shall not do any of the following:
 - (a) Charge interest under the agreement A SERVICE FEE THAT EXCEEDS THE LIMIT UNDER SECTION 33(1)A.
 - (b) Include a maturity date that is more than 31 days after the date of the transaction.
 - (c) Charge an additional fee for cashing the licensee's business check or money order if the licensee pays the proceeds to the drawer by business check or money order.
 - (d) Include a confession of judgment in the agreement.
 - (e) Except as provided in this act, charge or collect any other fees for a deferred presentment service transaction.
- (5) A licensee shall not refuse to provide a deferred presentment service transaction to a customer solely because the customer has exercised his or her rights under this act.
- (6) Each licensee shall post a sign, printed in bold faced, 36-point type, in a conspicuous location at each customer service window, station, or desk at each place of business, that states the following:

"Under Michigan law, you are entitled to receive the proceeds of this transaction in cash. If you request the proceeds in a check or money order, you may be charged additional check cashing or other processing fees by others for cashing the check or money order."
- (7) ANY DEFERRED PRESENTMENT SERVICE TRANSACTION MADE IN VIOLATION OF SUBSECTION 33(1) IS VOID AND UNCOLLECTIBLE AS TO ANY PRINCIPAL, FEE, INTEREST, OR CHARGE.

Sec. 40. A licensee shall not do any of the following:

- (a) Enter into a tying arrangement through which the licensee conditions the sale of 1 financial service to a consumer on the agreement by the consumer to purchase 1 or more other financial services from the licensee or an affiliate or subsidiary of the licensee.
- (b) Knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee.
- (c) EVADE THE REQUIREMENTS OF SECTION 33(1), INCLUDING, BUT NOT LIMITED TO, MAKING, OFFERING, ASSISTING, ARRANGING, OR GUARANTEEING A DEFERRED PRESENTMENT SERVICE TRANSACTION WITH A GREATER RATE OF INTEREST, CONSIDERATION, FEES, OR CHARGES THAN IS PERMITTED THEREIN THROUGH ANY METHOD INCLUDING MAIL, TELEPHONE, INTERNET OR ANY ELECTRONIC MEANS REGARDLESS OF WHETHER THE LICENSEE HAS A PHYSICAL LOCATION IN THE STATE.
- (D) ENGAGE IN ANY DEVICE, SUBTERFUGE, OR PRETENSE TO EVADE THE REQUIREMENTS OF THIS ACT, INCLUDING, BUT NOT LIMITED TO DISGUIISING LOAN PROCEEDS AS CASH REBATED FOR THE PRETEXTUAL INSTALLMENT SALE OF GOODS OR SERVICES OR MAKING LOANS DISGUISED AS PERSONAL PROPERTY, PERSONAL SALES, OR LEASEBACK TRANSACTIONS.

SEC. 40A.

- (1) IF THE ATTORNEY GENERAL HAS PROBABLE CAUSE TO BELIEVE THAT A PERSON HAS ENGAGED, IS ENGAGING, OR IS ABOUT TO ENGAGE IN ANY DEVICE, SUBTERFUGE, OR PRETENSE TO EVADE THE REQUIREMENTS OF THIS ACT, INCLUDING, BUT NOT LIMITED TO, DISGUIISING LOAN PROCEEDS AS CASH REBATED FOR THE PRETEXTUAL INSTALLMENT SALE OF GOODS OR SERVICES OR MAKING LOANS DISGUISED AS PERSONAL PROPERTY, PERSONAL SALES, OR LEASEBACK TRANSACTIONS, AND GIVES NOTICE PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL MAY BRING AN ACTION IN ACCORDANCE WITH PRINCIPLES OF EQUITY TO RESTRAIN THE DEFENDANT BY TEMPORARY OR PERMANENT INJUNCTION FROM ENGAGING IN THE DEVICE, SUBTERFUGE, OR PRETEXT. THE ACTION MAY BE BROUGHT IN THE CIRCUIT COURT OF THE COUNTY WHERE THE DEFENDANT IS ESTABLISHED OR CONDUCTS BUSINESS OR, IF THE DEFENDANT IS NOT ESTABLISHED IN THIS STATE, IN THE CIRCUIT COURT OF INGHAM COUNTY. THE COURT MAY AWARD COSTS TO THE PREVAILING PARTY. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR PERSISTENT AND KNOWING VIOLATION OF THIS ACT, THE COURT MAY ASSESS THE DEFENDANT A CIVIL FINE OF NOT MORE THAN \$25,000.00.
- (2) UNLESS WAIVED BY THE COURT ON GOOD CAUSE SHOWN NOT LESS THAN 10 DAYS BEFORE THE COMMENCEMENT OF AN ACTION UNDER THIS SECTION, THE ATTORNEY GENERAL SHALL NOTIFY THE PERSON OF HIS OR HER INTENDED ACTION AND GIVE THE PERSON AN OPPORTUNITY TO CEASE AND DESIST FROM THE ALLEGED UNLAWFUL DEVICE, SUBTERFUGE, OR PRETENSE OR TO CONFER WITH THE ATTORNEY GENERAL IN PERSON, BY COUNSEL, OR BY OTHER REPRESENTATIVE AS TO THE PROPOSED ACTION BEFORE THE PROPOSED FILING DATE. THE NOTICE MAY BE GIVEN TO THE PERSON BY MAIL, POSTAGE PREPAID, TO HIS OR HER USUAL PLACE OF BUSINESS OR, IF THE PERSON DOES NOT HAVE A USUAL PLACE OF BUSINESS, TO HIS OR HER LAST KNOWN ADDRESS, OR, IF THE PERSON IS A CORPORATION, ONLY TO A RESIDENT AGENT WHO IS DESIGNATED TO RECEIVE SERVICE OF PROCESS OR TO AN OFFICER OF THE CORPORATION.
- (3) A PROSECUTING ATTORNEY OR LAW ENFORCEMENT OFFICER RECEIVING NOTICE OF AN ALLEGED VIOLATION OF THIS ACT, OR OF A VIOLATION OF AN INJUNCTION, ORDER, DECREE, OR JUDGMENT ISSUED IN AN ACTION BROUGHT PURSUANT TO THIS SECTION, OR OF AN ASSURANCE UNDER THIS ACT, SHALL IMMEDIATELY FORWARD WRITTEN NOTICE OF THE VIOLATION TOGETHER WITH ANY INFORMATION HE OR SHE MAY HAVE TO THE OFFICE OF THE ATTORNEY GENERAL.
- (4) A PERSON WHO KNOWINGLY VIOLATES THE TERMS OF AN INJUNCTION, ORDER, DECREE, OR JUDGMENT ISSUED UNDER THIS SECTION SHALL FORFEIT AND PAY TO THE STATE A CIVIL FINE OF NOT MORE THAN \$5,000.00 FOR EACH VIOLATION. FOR THE PURPOSES OF THIS SECTION, THE COURT ISSUING AN INJUNCTION, ORDER, DECREE, OR JUDGMENT SHALL RETAIN JURISDICTION, THE CAUSE SHALL BE CONTINUED, AND THE ATTORNEY GENERAL MAY PETITION FOR RECOVERY OF A CIVIL FINE AS PROVIDED BY THIS SECTION.